

### **REMARKS**

Claims 1-11 are all the claims presently pending in the application.

It is noted that the claims have been amended solely to more particularly point out Applicant's invention for the Examiner, and not for distinguishing over the prior art, narrowing the claim in view of the prior art, or for statutory requirements directed to patentability.

It is further noted that, notwithstanding any claim amendments made herein, Applicant's intent is to encompass equivalents of all claim elements, even if amended herein or later during prosecution.

Claims 1-11 stand rejected under 35 U.S.C. §103(a) as unpatentable over US Patent 5,712,985 to Lee, et al., further in view of article written by C. Emert.

This rejection is respectfully traversed in view of the following discussion.

#### **I. THE CLAIMED INVENTION**

Applicant's invention, as defined for example in independent claim 1, and substantially similarly in independent claims 9 and 10, is directed to a method suitable for projecting demand, including identifying a first set of merchandise and specifying a second set of merchandise which is to be used as a referent for soliciting information relative to demand behavior for a pre-determined attribute of the first set of merchandise. The second set of merchandise is clustered for generating a demand profile for the pre-determined attribute of the first set of merchandise. The second set of merchandise is clustered for generating a demand model correlated to model-based demand attributes of the first set of merchandise. The generated demand profile and the generated demand model are combined into a single encompassing model which is capable of projecting demand of the first set of merchandise.

At least one of the clustering for generating a demand profile, the clustering for generating a demand model, and the combining the generated demand profile and generated demand model are executed on a computer CPU.

An exemplary configuration of the method for projecting demand is shown in Figure 1 of the application.

The conventional systems, such as those discussed below and in the Related Art section of the present application, do not have such a structure, and fail to provide for such an operation.

Indeed, such features are clearly not taught or suggested by the cited references.

## II. THE PRIOR ART REJECTION

The Examiner alleges US Patent 5,712,985 to Lee et al., further in view of what appears to be a brief marketing article by Emert, entitled "Gap Sizzles San Francisco apparel retailer out-markets the high-tech firms", somehow renders obvious the present invention defined by claims 1-11.

Applicants disagree and submit that the rejection currently of record fails to meet the Examiner's initial burden of a *prima facie* rejection, as follows.

First, there is no suggestion whatsoever in Lee to use data related to a first item to develop a marketing estimate for a second item. Indeed, as clearly described at lines 46-49 of column 5, it is clear that each item is separately analyzed.

This basic operating principle in Lee would be changed if the Examiner insists upon modifying it in accordance with the plain meaning of the language of the independent claims. Therefore, Applicants submit that Lee cannot even be used as the primary reference in a *prima facie* rejection of the claimed invention since it would violate the evaluation guideline clearly described in MPEP §2143.01: "THE PROPOSED MODIFICATION CANNOT CHANGE THE PRINCIPLE OF OPERATION OF A REFERENCE."

Second, there is no suggestion whatsoever in Lee to use clustering in any manner. As clearly described at lines 49-63 of column 5, the principle of operation in Lee relies upon historical profiles. Applicants submit that, to one of ordinary skill in the art, profiling is an entirely different concept from clustering and that, therefore, again, Lee cannot be used as the primary reference since it teaches an entirely different principle of operation.

The Examiner is understood as conceding that Lee fails to teach either of the two above-identified aspects of the present invention.

Third, the Examiner relies upon Emert as teaching "... apparel companies use demand forecasting to ensure they are carrying the right quantities, sizes, and colors." Applicants submit that Lee already teaches this basic marketing concept and that Emert, therefore, adds nothing to overcome the above-identified deficiencies conceded by the Examiner.

Fourth, the Examiner's conclusory statement "If it is found that a size is selling well in skirts, one would project a future demand of that size in shorts or other pants - leading to the conclusion that most consumers at that establishment are a certain size" is completely irrelevant to a patentability analysis since neither cited reference even suggests this concept. Applicants further submit that this unsupported conclusory statement is clear evidence of improper hindsight by the Examiner.

Finally, Applicants submit that the rejections currently of record for the remaining claims at most provide an allegation that such claimed details are possible. Again, Applicants submit that the Examiner applies the wrong standard, as clearly described in MPEP §2143.01: "The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination" (emphasis in MPEP itself).

Therefore, should the Examiner maintain the rejection currently of record, Applicants respectfully request that the above five concerns be properly addressed on the record and that proper objective prior art references be provided to support the allegations of the rejection.

Hence, turning to the clear language of the claim, in neither Lee nor Emert, there is no teaching or suggestion of: "... method suitable for projecting demand, the method comprising: (i) identifying a first set of merchandise; (ii) specifying a second set of merchandise which is to be used as a referent for soliciting information relative to demand behavior for a pre- determined attribute of said first set of merchandise; (iii) clustering the second set of merchandise for generating a demand profile for said pre-determined attribute of said first set of merchandise; (iv) clustering the second set of merchandise for generating a demand model correlated to model-based demand attributes of said first set of merchandise; and (v) combining the demand profile and the demand model into a single encompassing model which is capable of projecting demand of the first set of merchandise...."

For the reasons stated above, the claimed invention is fully patentable over the cited reference.

Further, the other prior art of record has been reviewed, but it too, even in combination with Lee or Emert, fails to teach or suggest the claimed invention.

### III. FORMAL MATTERS AND CONCLUSION

In view of the foregoing, Applicant submits that claims 1-11, all the claims presently pending in the application, are patentably distinct over the prior art of record and are in condition for allowance. The Examiner is respectfully requested to pass the above application to issue at the earliest possible time.

Should the Examiner find the application to be other than in condition for allowance, the Examiner is requested to contact the undersigned at the local telephone number listed below to discuss any other changes deemed necessary in a telephonic or personal interview.

The Commissioner is hereby authorized to charge any deficiency in fees or to credit any overpayment in fees to Assignee's Deposit Account No. 50-0510.

Respectfully Submitted,

Date: 8/6/04



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